

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6924

Joint Petition of Washington Electric Cooperative, Inc.)
("WEC") and Coventry Clean Energy Corporation)
("CCEC") for: (1) a certificate of public good)
authorizing CCEC to operate as a corporation that)
generates and transmits electricity; (2) authorization of)
WEC to have a 100% ownership interest in CCEC; and)
(3) approval for CCEC to sell all its generation to WEC)

Order entered: 7/22/2004

I. INTRODUCTION

This case involves a petition filed by Washington Electric Cooperative, Inc. ("WEC") and the Coventry Clean Energy Corporation ("CCEC") on December 5, 2003, requesting:

- (1) a certificate of public good ("CPG"), pursuant to 30 V.S.A. §§ 231 and 102,¹ authorizing CCEC to operate as a corporation that generates and transmits electricity;
- (2) approval of WEC's 100 % ownership interest in CCEC, pursuant to 30 V.S.A. § 107;
- (3) approval for CCEC to sell all its generation to WEC, pursuant to 30 V.S.A. § 109;
- (4) approval and consent for WEC's promissory note to the Rural Utilities Services ("RUS"), pursuant to 30 V.S.A. § 108(a); and
- (5) approval and consent for CCEC's promissory note and security agreement to WEC, pursuant to 30 V.S.A. § 108(a).

On June 25, 2004, WEC, CCEC, and the Vermont Department of Public Service ("Department") filed a stipulation requesting Vermont Public Service Board ("Board") approval for these five requests. No party requested a hearing on these five requests and I have determined that no hearing is required. This proposal for decision ("PFD") recommends that the Board

1. Petitioners are requesting authorization pursuant to both Sections 102 and 231, although it appears from the statutory language of Section 102, and the Articles of Incorporation for CCEC, filed with the Board, that a CPG pursuant to Section 231 should be sufficient. However, Petitioners have requested authorization under both statutes and no party has raised any objection.

approve all the requests except for the request for approval of the Electric Supply Agreement, which I find to be unnecessary.

On June 4, 2004, the Vermont Public Service Board ("Board") issued a CPG, pursuant to 30 V.S.A. § 248, authorizing WEC to construct a 4.8 MW generating station at the landfill located in Coventry, Vermont (owned by New England Waste Services of Vermont, a wholly-owned subsidiary of Casella Waste Systems, Inc. ("Casella")), and necessary additions and improvements to the transmission system to accommodate this generation (collectively, the "Coventry Project").² A description of the roles of WEC, CCEC, and Casella in the Coventry Project was described in that Order:

WEC, through its subsidiary CCEC, have entered into a 33-year lease with Casella for the gas rights and land where the generation facility is to be located. CCEC shall pay Casella a base quarterly charge of \$250 plus 30% of the net cash benefits that CCEC receives from the Renewable Energy Production Incentive program and the monetization of renewable tax credits. In addition, WEC will purchase the gas collection system, associated permits and agreements from Casella for \$255,000.³

The business and financial arrangements recommended for approval in this proposal for decision are necessary for the successful implementation of the Coventry Project.

II. FINDINGS

Based upon the substantial evidence of the record, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

Overview of the Coventry Project

1. WEC is a company as defined by 30 V.S.A. § 201, and as such is subject to the Board's jurisdiction pursuant to 30 V.S.A. § 203. Petition at 1.

2. CCEC is a duly organized Vermont corporation with its intended principal place of business to be located in Coventry, Vermont. CCEC is a wholly-owned subsidiary of WEC.

2. Docket 6925, Order of 6/4/04.

3. Docket No. 6925, Order of 6/4/04 at 5.

CCEC is a company as defined by 30 V.S.A. § 201 and as such is subject to the Board's jurisdiction pursuant to 30 V.S.A. § 203. Petition at 2.

3. The Coventry Project is needed to meet WEC's present and future energy demands, which could not otherwise be addressed in a cost-effective manner through energy conservation, energy efficiency, and load management measures. Faryniarz pf. at 15-18, 31-32; exhs. WEC 13a-c, WEC 12.

4. Development of the Coventry Project promotes the public good by providing a long-term supply of base-load power to WEC and its members at a competitive, stable, and predictable price, providing a direct hedge against volatility in wholesale electricity market prices and fossil fuel costs. Patt pf. at 6; Faryniarz pf. at 32; Faryniarz supp. pf. at 14.

Authorization for CCEC to Operate as a Corporation that Generates and Transmits Electricity

5. CCEC will have the technical expertise necessary to operate as a generator and transmitter of electricity by hiring WEC or another experienced contractor to maintain and operate the electric generation plant and transmission facilities. Patt pf. at 14.

6. CCEC will have the ability to maintain an equitable balance between the interests of customers and shareholders because CCEC's only customer and shareholder are both WEC. Patt pf. at 15.

7. CCEC will be financially stable. It will be adequately capitalized with \$5,000 generated from the sale of shares of its stock to WEC and a \$286,675 loan from WEC. Prior to start-up CCEC will have only nominal costs because design, permitting, and construction costs are WEC's responsibility. The rate for electricity sold to WEC under the Electric Supply Agreement will cover CCEC's anticipated expenses and provide it with a reasonable reserve margin. Patt pf. at 15-16.

WEC's Controlling Interest in CCEC

8. CCEC will be able to maintain a relationship with its customer, WEC, consistent with the public good. CCEC's sole customer is WEC. As a wholly-owned subsidiary of WEC, CCEC will inherently be responsive to the needs of its sole customer. Patt. pf. at 18.

9. WEC's 100% controlling interest in CCEC will promote overall organizational efficiency. This efficiency will be effectuated by having a single entity that has responsibility for the operation and maintenance of the electrical generation and transmission facilities. In addition, the creation of a wholly-owned subsidiary is a prudent business structure to manage potential liabilities from third party claims. Patt pf. at 19-20.

CCEC's Sale of Electricity to WEC

10. WEC and CCEC intend to enter into an Electric Supply Agreement whereby CCEC sells all its generation to WEC. Patt pf. at 12; exh. WEC 8.

11. WEC and CCEC are requesting that the Board approve the Electric Supply Agreement, pursuant to 30 V.S.A. § 109. Petition at 7.

Discussion

WEC and CCEC do not need approval from the Board, pursuant to 30 V.S.A. § 109, to enter into the Electric Supply Agreement. Section 109 requires Board approval for "a sale or lease or series of leases in any one calendar year constituting ten percent or more of the company's property located within this state. . . ." The electricity generated at the Coventry plant does not constitute property. Consequently, there is no need for WEC to obtain Board approval for this component of the Project. This is not to say that the Electric Supply Agreement could not be reviewed by the Board. Such review is discretionary and is made feasible by Board Rule 5.200 – Notification of Power Supply Transactions. At this time, there is insufficient information to adequately review the Electric Supply Agreement, as the purchase price of the energy has not been determined.

WEC's Promissory Note to RUS

12. WEC seeks to issue a promissory note with RUS for the \$7.32 million necessary to construct the Coventry project. Exh. WEC 19a. WEC is seeking a 100% municipal-rate loan that will provide financing to WEC at below-market rates. The general terms of this loan will likely require payment over 25 years. The promissory note will be secured with a mortgage and

security agreement between WEC, RUS, and the National Rural Utilities Cooperative Finance Corp.⁴ Exh. WEC 19b.

13. The Department has determined that WEC's promissory note to the RUS is consistent with the Vermont Twenty-Year Electric Plan. Exh. WEC 21.

CCEC's Promissory Note to WEC

14. CCEC seeks to issue a Promissory Note to its parent corporation, WEC, for \$286,675 to provide adequate capitalization and to purchase the gas collection system necessary from Casella to effectuate the Coventry Project. Exh. WEC 20. The Promissory Note requires CCEC to pay \$286,675 together with accrued interest in thirty equal installment payments over the course of ten years. The Promissory Note will be subject to a security agreement in which CCEC pledges all of its properties, rights, and assets as collateral. Exh. WEC 10.

15. The interest rate for the Promissory Note will be 5%. Exh. WEC 20.

16. The Department has determined that CCEC's promissory note to WEC is consistent with the Vermont Twenty-Year Electric Plan. Exh. WEC 21.

Discussion

On June 4, 2004, the Board issued a Certificate of Public Good to WEC, authorizing the construction of a 4.8 MW landfill gas generating unit in Coventry, Vermont. The Promissory Notes that WEC and CCEC are requesting are needed to build this project. For this reason, I recommend that the Board issue consent to WEC and CCEC for their Promissory Notes.

III. DISCUSSION AND CONCLUSION

The parties have waived their rights, pursuant to 3 V.S.A. § 811, to file written comments or present oral argument on this proposal for decision.

For the reasons stated above, I recommend that the Board:

- (1) issue a CPG to CCEC pursuant to 30 V.S.A. §§ 102 and 231;

4. WEC's original petition sought approval of a promissory note for \$6.345 million. However, as noted in the supplemental prefiled testimony of Mr. Faryniarz at 10, the projected cost of the Coventry Project has increased due to the increase in generation capacity.

- (2) approve WEC's 100 % ownership interest in CCEC, pursuant to 30 V.S.A. § 107;
- (3) decline to approve Petitioners' requested approval of the Electric Supply Agreement between WEC and CCEC, pursuant to 30 V.S.A. § 109, as approval is not necessary;
- (4) approve WEC's promissory note to the RUS; and
- (5) approve CCEC's promissory note to WEC.

Dated at Montpelier, Vermont, this 22nd day of July, 2004.

s/Ed McNamara
Edward McNamara, Esq.
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The conclusions and recommendations of the Hearing Officer are adopted.
2. CCEC shall be issued a certificate of public good, pursuant to 30 V.S.A. §§ 231 and 102, authorizing CCEC to operate as a corporation that generates and transmits electricity.
2. WEC's 100 % ownership interest in CCEC is approved.
3. Petitioners are not required to obtain approval, pursuant to 30 V.S.A. § 109, for the Electric Supply Agreement. However, Petitioners must file the final Electric Supply Agreement with the Board 90 days prior to entering into the agreement, pursuant to Board Rule 5.200.
4. The Board consents to WEC's promissory note to the Rural Utilities Services ("RUS"), as set forth in the findings, above.
5. The Board consents to CCEC's promissory note and security agreement to WEC, as set forth in the findings, above.
6. This Order does not constitute approval of any particular capital or operating expenditure nor the underlying capital structure that WEC may implement with the proceeds from the issuance of debt under its Agreement with the RUS. Nothing in this approval shall preclude the Department or any other party, or the Board, from reviewing or challenging those expenditures and/or the WEC resulting capital structure in any future proceeding.

Dated at Montpelier, Vermont, this 22nd day of July, 2004.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 22, 2004

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.